evidence given in examination-in-chief that the deceased ran the tuckshop at Segamat with the assistance of his wife. On that basis he assessed the contribution from the deceased to the family at $250 a month.

The only ground of appeal is that the learned trial Judge failed to take into account the fact that in respect of the Segamat business the widow, by her own exertions, contributed towards the household expenses.

In my view the evidence on record clearly discloses that the deceased took no part in the business at Segamat and to that extent the learned trial Judge misapprehended the facts in this particular case when he arrived at the sum of $250 a month as the value of the dependency.

It is conceded by counsel for the respondents that the deceased would have had to pay $70 to $80 a month to employ someone to take the place of the widow on the assumption that she did not run the business at Segamat.

In my view, the amount of the dependency, bearing in mind that the evidence in respect of the Cha'ah business was so unsatisfactory, should be at a figure of $180 a month and on that figure, according to the figures available and accepting the learned trial Judge's finding on life expectation to be 13 years (which has not been disputed in this appeal), I would substitute the amount to be awarded as general damages at $20,282.40 and I would, therefore, allow the appeal to the extent that the total amount of damages should be reduced by the difference between $28,170 and $20,282.40.

Thomson L.P.: I agree with what my Lord has said and I also agree with his conclusion that the damages for loss of support should be reduced to $20,282.40.

I would, however, add one observation of a general nature. This is by no means the first appeal this Court and its predecessor have had to deal with in which somewhat insufficient attention has been given at the trial to the question of giving adequate evidence on the question of quantum of damages. It is for counsel in such cases to devote a little more attention to that aspect of the matter in future. As Lord Goddard said in the case of *Bonham-Carter* v. *Hyde Park Hotel, Ltd.*[1]:—

"Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages'. They have to prove it."

The appeal is allowed; the general damages for loss of support are reduced to $20,282.40; the appellant will have his costs and the deposit should be paid out to the appellant.

Tan Ah Tah J. concurred.

Appeal allowed.

Solicitors: *Murphy & Dunbar; George & Khoo.*

ABDUL MAJEED v. YEO CHNG TAY

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Wylie C.J. (Borneo)) January 7, 1964]

[K.L. — Federal Court Civil Application No. 44 of 1963]

Practice and Procedure—Appeal—Leave to—Out of Time—Mistake of legal adviser.

Federal Court (Civil Appeals) (Transitional) Rules, 1963, r.13—"Special leave"—Meaning of—Courts Ordinance, 1948, s. 37.

The ground on which special leave to appeal was asked for in this application was that applicant's legal adviser had made a mistake. He was under the erroneous impression that it was a case where leave was required under section 37 of the Courts Ordinance and by reason of that mistake got himself out of time for appealing in the ordinary way.

Held: such a mistake was not a sufficient ground for granting the application.

"Special leave" means leave to be granted on account of special circumstances.

Cases referred to:—

(1) *Re Macadam* [1950] 1 All E.R. 659.

(2) *Wilkins* v. *Wilkins* [1951] M.L.J. 80.

(3) *Butler-Madden* v. *Krishnasamy* [1947] M.L.J. 182.

(4) *Re Coles and Ravenshear* [1907] 1 K.B. 1.

(5) *Catti* v. *Shoosmith* [1939] 3 All E.R. 916.

FEDERAL COURT.

S. Kulasekaram for the applicant.

S. T. Chung for the respondent.

The judgment of the Court was delivered by,

Thomson L.P. (delivering oral judgment): This application has now resolved itself into an application for leave to appeal out of time.

The matter is now governed by Rule 13 of the Federal Court (Civil Appeals) (Transitional) Rules which requires special leave of the Federal Court. It reads:—

"No appeal shall, except by special leave of the full Court, be brought after the expiration of one month."

The ground on which special leave is asked is that the legal adviser of the applicant has made a mistake. He was under the erroneous impression that it was a case where leave was required under section 37 of the Courts Ordinance and by reason of that mistake got himself out of time for appealing in the ordinary way.

We have considered the matter carefully and we have come to the conclusion that special leave means leave to be granted on account of special circumstances.

In view of the decision of the English Court

of Appeal in *Re Macadam* [1] and in view of my own decision in the local case of *Wilkins* v. *Wilkins* [2] which followed the earlier case of *Butler-Madden* v. *Krishnasamy* [3] and which has been accepted by the profession for the last thirteen years we are of the opinion that the present application is to be decided in the light of what was said in *Re Coles and Ravenshear* [4] and not in the light of what was said in *Catti* v. *Shoosmith.* [5]

From that it follows that the application must be dismissed with costs.

Application dismissed.

CALTEX OIL (MALAYA) LTD. v. HO LAI YOKE & ANOR.

[O.C.J. (Ong J.) January 7, 1964]
[K.L. — Civil Suit No. 792 of 1963]

Contract—Sale of Land—Repudiation by vendor—Specific performance—Contracts (Malay States) Ordinance, 1950, s. 52—Specific Relief (Malay States) Ordinance, 1950, ss. 13, 15.

By an agreement dated March 26, 1961, the vendors YFC and HHC granted to the plaintiffs an option to purchase a parcel of land made up of Lot Nos. 145, 3 and 165. Lot 3 was State land which had been approved by the Collector of Land Revenue to the vendors. Lot 165 was acquired on October 12, 1961. The plaintiffs received the option on September 22, 1961 and requested the vendors to deliver documents of title and registrable transfers in exchange for a cheque for $33,500 which was deposited with the plaintiffs' solicitors. The vendors called at the office of the plaintiffs' solicitors but produced no documents of title. On October 12, 1961, the plaintiffs took back their cheque but paid a similar sum to their solicitors to be paid out to the vendors when the ownership details were satisfactorily settled. On the same day the vendors' solicitors wrote to the plaintiffs' solicitors informing them that the vendors had purchased Lot 165 from the beneficial owners and requested the plaintiffs to pay 90% of the purchase price in advance. On October 21, 1961 the vendors applied to the Collector for variation of the express condition attached to the alienated portion of Lot 3. Upon the Collector refusing this on April 7, 1962 the vendors' solicitors wrote to the plaintiffs' solicitors conveying the information and concluded by requesting an advance payment. On May 8, 1962 the vendors' solicitors wrote to the plaintiffs' solicitors that the vendors considered the agreement to be at an end. The plaintiffs claimed specific performance of the contract.

Held: (1) clauses 4 and 5 of the option agreement were reciprocal promises intended to be simultaneously performed within the meaning of section 52 of the Contracts, (Malay States) Ordinance;

(2) non payment of the stipulated sum was entirely due to the default of the vendors being unable to perform their part of the contract;

(3) the plaintiffs were entitled to specific performance because they were ready and willing to complete at all times and the purported repudiation of the contract by the vendors on May 8, 1962 had not been accepted by them.

Cases referred to:—

(1) *Carter (Councils) Ltd.* v. *McGregor* [1962] 2 W.L.R. 17, 37.

(2) *Heyman* v. *Darwins Ltd.* [1942] A.C. 356, 361.

ACTION.

D. G. Rawson for the plaintiffs.

N. A. Marjoribanks for the defendants.

Cur. Adv. Vult.

Ong J.: In this action the plaintiffs are claiming specific performance of a contract for the sale of land.

By an agreement dated March 26, 1961 the vendors, Yong Fook Choon and Ho Hing Cheong, granted to the plaintiffs an option to purchase a parcel of land approximately 14,400 sq. ft. in area at the price of $39,000 provided that such option was exercised within six months. This area was comprised, in the main, of Lot No. 145 as the central portion, roughly rhomboidal, with two triangular pieces at the opposite ends which helped to convert the rhomboid into a neat rectangle. The triangle on the top left was then still part of State land designated as Lot No. 3, while the other triangle on the bottom right corner formed part of Lot No. 165 which did not belong to the vendors.

There is no dispute as to the extent and boundaries of the land forming the subject matter of the option agreement — indeed at all relevant times the parties had been fully agreed thereon — notwithstanding that the two triangular portions were not at the immediate disposal of the vendors by transfer. Alienation of portion of the State land for shop-house development had, however, already been approved in a letter by the Collector of Land Revenue to the vendors dated November 24, 1958 and there was no legal impediment to the inclusion thereof in the option agreement. As to the other triangular portion from Lot No. 165 the vendors had expectations — which in the event were fulfilled — of acquiring it from its proprietors, (see page 6 of Agreed Bundle "A").

The plaintiffs in due course exercised their option by notice in writing dated September 22, 1961 service of which was acknowledged by the vendors personally. It reads —

" 22nd September 1961.

Yong Fook Choon,
1 Klyne Street,
Kuala Lumpur.
Ho Hing Cheong,
218 High Street,
Kuala Lumpur.
Dear Sirs,

C.T. 13372 Lot 145 Section 98
Town of Kuala Lumpur E.M.R. 5169
Lot 165 Section 98 Town of Kuala
Lumpur Notice of exercise of Option.

We are pleased to attach a copy of the Federal Commissioner's letter of 21st September, 1961, giving us Planning Permission for our service station in line with plans submitted and signed by your goodselves as Landowners in April of last year. We thus would refer to